

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TECHNICAL ANALYSIS
SUPPORTING
ADMINISTRATIVE CIVIL LIABILITY
AGAINST THE
CITY OF OCEANSIDE
OCEANSIDE OCEAN OUTFALL**

For

**FAILURE TO COMPLY
WITH
EFFLUENT LIMITATIONS
PRESCRIBED IN
ORDER NO. 2000-11
WASTE DISCHARGE REQUIREMENTS
FOR THE
CITY OF OCEANSIDE
SAN LUIS REY AND LA SALINA
WASTEWATER TREATMENT PLANTS
DISCHARGE TO THE PACIFIC OCEAN
VIA THE OCEANSIDE OCEAN OUTFALL**

September 2, 2004

**Prepared by
Rebecca Stewart
Sanitary Engineering Associate
Compliance Assurance Unit**

1. INTRODUCTION

This report provides a summary of factual evidence supporting the administrative imposition of civil liability against the City of Oceanside for which civil liability in the amount of \$18,000 is being imposed for violations of California Regional Water Quality Control Board, San Diego Region (Regional Board) Order No. 2000-11.

2. BACKGROUND

The City of Oceanside owns and operates the La Salina and San Luis Rey Wastewater Treatment Plants, which discharge treated wastewater to the Pacific Ocean via the Oceanside Ocean Outfall. The ocean discharge is regulated by Order No. 2000-11, NPDES No. CA0107433, adopted by the Regional Board on February 9, 2000. Order No. 2000-11 requires the City of Oceanside to monitor a variety of effluent constituents on a routine basis that are subject to mandatory minimum penalties in accordance with California Water Code (CWC) sections 13385(h) and (i).

Between October 14, 2003 and October 29, 2003 the City of Oceanside experienced two mechanical failures at the San Luis Rey Wastewater Treatment Plant. The dissolved air floatation unit (DAF) malfunctioned due to a gearbox failure on October 14. During the fourteen days the DAF unit was out of service, the City was able to maintain compliance with effluent limitations prescribed in Order No. 2000-11 by recycling waste activated sludge through the primary clarifiers. On October 26, one day before the DAF unit was returned to service, the main aeration blower failed because of an electrical problem. The main aeration blower was returned to service on October 29. Effluent samples taken on October 29 exceeded the concentration and mass emissions maximum at any time total suspended solids (TSS) effluent limitations. A subsequent sample taken on November 5, 2003 also exceeded the TSS concentration and mass emissions maximum at any time effluent limitations as well as the concentration maximum at any time effluent limitation for settleable solids. The sample collected on November 5 resulted in five additional weekly (7 day) average and twenty additional monthly (30 day) average settleable solids effluent limitation violations. The thirty-one reported effluent limitations are all classified as serious violations for the purposes of calculating mandatory minimum penalties, and could be subject to ninety three thousand dollars (\$93,000) in mandatory minimum penalties.

3. ALLEGATIONS

3.1 Total Suspended Solids and Settleable Solids Discharges in Violation of Effluent Limitations Prescribed in Order No. 2000-11

The City of Oceanside discharged TSS to the Pacific Ocean in violation of the concentration maximum at any time and mass emissions effluent limitations contained in Order No. 2000-11 on October 29 and November 5, 2003 for a total of four violations.

The City of Oceanside discharged settleable solids to the Pacific Ocean from the Oceanside Ocean Outfall in violation of the concentration maximum at any time, weekly average (7 day), and monthly average (30 day) effluent limitations contained in Order No. 2000-11 between November 5 and December 4, 2003 for a total of twenty-seven violations.

4. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

With regards to the violations alleged in Section 3.1 above, California CWC section 13385(a)(2) states that any person who violates any waste discharge requirement issued pursuant to this chapter shall be liable civilly. Civil liability may be administratively imposed under CWC 13385(c).

CWC section 13385(h)(1) requires that a mandatory minimum penalty of three thousand dollars (\$3,000) be assessed for each serious violation. A serious violation is defined as any waste discharge that violates an effluent limitation for a Group II pollutant by 20 percent or more or for a Group I pollutant by 40 percent or more as defined in Section 123.45 of Title 40 of the Code of Federal Regulations. TSS and settleable solids are Group I pollutants. All of the thirty-one violations reported between October 29 and December 4, 2003 are serious violations.

4.1 Factors to be Considered When Determining Administrative Civil Liability

Section 13385(e) of the CWC requires that the following factors be taken into consideration in determining the amount of civil liability: the nature, circumstance, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

While consideration of the above factors are not required for the imposition of mandatory minimum penalties, due to the nature and number of violations reported by the City of Oceanside during the period addressed in Complaint No. R9-2004-0298, the factors were reviewed with the following comments:

4.1.1. Nature, Circumstance, Extent, and Gravity of the Violations

On October 14, 2003 the dissolved air floatation unit (DAF) at the City of Oceanside's San Luis Rey Wastewater Treatment Plant malfunctioned due to a gearbox failure. The failure caused Oceanside personnel to begin re-circulating waste activated sludge back to the primary clarifier in order to keep excessive solids from entering the waste stream. The DAF was out of service until October 27 due to difficulties in obtaining replacement parts. During the period the DAF unit was out of service, the City was able to discharge effluent to the Oceanside Ocean Outfall in compliance with effluent limitations prescribed in Order No. 2000-11.

On October 26, 2003 the primary aeration blower went out of service due to an electrical failure. The unit was put back in service on October 29. Because the amount of solids in the aeration tanks had increased from 2700 mg/L on October 13 to 7700 mg/L on October 28, the City was unable to prevent concentration maximum at any time and mass loading TSS violations from occurring on October 29, 2003. Although the DAF unit was back in service on October 27 and the aeration blower returned to service on October 29, hydraulic limitations in the system prevented enough solids from being removed from the wastewater to avoid concentration maximum at any time and mass loading TSS and concentration maximum at any time settleable solids violations on November 5, 2003. The November 5 exceedances of the concentration maximum at any time settleable solids effluent limitation caused the weekly average limit to be exceeded five times between November 5 and November 11 and the monthly average limit to be exceeded fourteen times between November 7 and December 4. Order No. 2000-11 states that the weekly and monthly average effluent limitations shall be the moving arithmetic mean of daily concentrations over the specified period. As a result, the City is required to recalculate the averages each time a sample is taken.

The City of Oceanside complied with the requirements contained in Standard Provision F.37 of Order No. 2000-11 in categorizing

the effluent limitation violations occurring between October 29, 2003 and December 4, 2003 that resulted from two separate mechanical failures, as an upset. CWC section 13385(f)(2)(A) provide for violations resulting from a single operational upset to be treated as a single violation with regards to the calculation of mandatory minimum penalties required pursuant to CWC sections 13385(h) and (i). However, CWC section 13385(f)(2)(B) requires that in no case shall the period for which violations are collapsed into one violation exceed thirty days.

Based on the requirements contained in CWC section 13385(f)(2)(B), the twenty-six violations occurring between October 29 and November 27 (30 day period) shall be considered one violation subject to a single three thousand dollar (\$3,000) mandatory minimum penalty. The five serious violations occurring between November 28 and December 4, 2003 are outside the 30 day limit for single operational upsets and therefore must be assessed three thousand dollars (\$3,000) each for a total mandatory minimum penalty of eighteen thousand dollars (\$18,000).

4.1.2. Gravity of Violations

Suspended and settleable solids are deleterious to benthic organisms and may cause the formation of anaerobic conditions. They can clog fish gills and interfere with respiration in aquatic fauna. They also screen out light, hindering photosyntheses and normal aquatic plant growth and development.

4.1.3. Susceptibility to Cleanup and Abatement

The discharge of suspended and settleable solids in excess of prescribed effluent limitations through the Oceanside Ocean Outfall is not susceptible to cleanup and abatement.

4.1.4. Degree of Toxicity

Total suspended solids and settleable solids are not identified as toxic pollutants in accordance with the California Toxics Rule of the Code of Federal Regulations. Although the discharge of excessive solids can result in deleterious effects on receiving waters and benthic organisms, the discharge of excessive solids is not considered toxic.

4.1.5. Ability to Pay and Continue in Business

It is not anticipated that the payment of the administrative civil liability for violations cited in Complaint No. R9-2004-0298 would pose a significant financial hardship; however, the City has the principle burden of establishing a claim of its inability to pay.

4.1.6. Voluntary Cleanup Efforts Undertaken

This factor does not apply to the effluent limitation violations addressed in this enforcement action.

4.1.7. Prior History of Violation

In May 2000 the Regional Board assessed civil liability against the City of Oceanside in the amount of \$346,015 for three sewage spills into Buena Vista Lagoon. The City reported 19 sewage spills in fiscal year 2000/2001 (July 1 through June 30), 17 sewage spills in fiscal year 2001/2002, 25 sewage spills in fiscal year 2002/2003 and 19 sewage spills between July 1 and December 31 2003. All sewage spills are violations of Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewering Agencies*.

The City of Oceanside has been assessed mandatory minimum penalties totaling eighteen thousand dollars (\$18,000) for effluent limitation violations from discharges from the Oceanside Ocean Outfall beginning in 2000. None of the previous violations have been for TSS or settleable solids, nor have they been caused by mechanical failures at either of the City's wastewater treatment facilities.

4.1.8. Degree of Culpability

The record in this matter indicates that the City of Oceanside prepared and adhered to preventive maintenance schedules for both the DAF unit and the primary aeration basin blower. There is no indication that the mechanical failures which caused the effluent limitations were due to operator error or negligence.

4.1.9 Economic Benefit or Savings

Based on the evidence in the record, the City of Oceanside did not receive any economic benefit or savings as a result of these violations.

4.1.10 Other Matters as Justice May Require

Over the course of dealing with the City of Oceanside regarding the violations detailed in this report, the Regional Board has invested sixty hours to investigate and consider action regarding this matter. This includes monitoring report review, preparation of a Notice of Violation, CWC Section 13267 request for information and follow-up, and preparation of documents associated with this enforcement action. At an average rate of ninety dollars (\$90) per hour, the total investment of Regional Board resources is five thousand, four hundred dollars (\$5,400).

4.2. Maximum Possible Civil Liability

Pursuant to CWC section 13385(c) the Regional Board may administratively impose civil liability for violations of waste discharge requirements contained in an NPDES permit in an amount not to exceed ten thousand dollars (\$10,000) per day for each violation and up to ten dollars (\$10) per gallon discharged minus the first 1,000 gallons.

Based on thirty-one reported violations, the maximum per day assessment that can be administratively imposed by the Regional Board is three hundred ten thousand dollars (\$310,000).

Based on the wastewater flow from the Oceanside Ocean Outfall on the days violations were reported, as summarized in Table A, the maximum per gallon assessment that can be administratively imposed by the Regional Board is three billion, one hundred fifty million, six hundred eighty thousand dollars (\$3,150,680,000).

The maximum possible liability that can be administratively imposed against the City of Oceanside by the Regional Board for the effluent limitation violations addressed in Complaint No. R9-2004-0298 is three billion, one hundred fifty three million, seven hundred eighty thousand dollars (\$3,153,780,000).

4.3. Mandatory Minimum Civil Liability

CWC section 13385(h)(1) requires that a mandatory minimum penalty of three thousand dollars (\$3,000) be assessed for each serious violation. A serious violation is defined as any waste discharge that violates an effluent limitation for a Group II pollutant by 20 percent or more or for a Group I pollutant by 40 percent or more as defined in Section 123.45 of Title 40 of the Code of Federal Regulations. TSS and settleable solids are Group I

pollutants. All of the thirty-one violations reported between October 29 and December 4, 2003 are serious violations.

CWC section 13385(f)(2) states that a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation for the purposes of imposing mandatory minimum penalties, but in no case may that period exceed thirty days. The City of Oceanside has provided adequate documentation for the Regional Board to make a determination that the thirty-one TSS and settleable solids violations that occurred between October 29, 2003 and December 4, 2003 were the result of a single operational upset. Based on this determination, the minimum amount of administrative civil liability that can be imposed by the Regional Board pursuant to CWC section 13385(h) is eighteen thousand dollars (\$18,000).

4.3 Total Proposed Administrative Civil Liability

After consideration of the factors contained in CWC section 13355(e), the total proposed administrative civil liability for the violations addressed in Complaint No. R9-2004-0298 is eighteen thousand dollars (\$18,000).